IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3181 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRA @ BABLU DIXIT

Versus

STATE OF GUJARAT

Appearance:

MR BM GUPTA for Petitioner

Mr K G Sheth, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/10/2000

ORAL JUDGEMENT

This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing and setting aside the order passed below Exh.6 on 26.5.2000 and order passed below Exh. 11 on 2.6.2000 and order passed below Exh. 12 rejecting the prayer of the

applicant and to allow those applications Exhs. 6, 11 and 12 pending before the learned Addl.Sessions Judge, Ahmedabad City in Sessions Case No.135/2000 and to quash and set aside the examination-in-chief of PW.I pending in that court.

2. The petitioner above named faces trial in Sessions Case No. 135/2000 for offences punishable under Section 302 of Indian Penal Code read with section 135(1) of the Bombay Police Act. It appears that on 26.5.2000, the petitioner had submitted application at Annexure 'A' at Exh.6 before the trial court stating that the matter was kept for evidence and the petitioner was facing grave charge. That he had a talk with an Advocate for engaging him as Advocate and the Advocate would require some time for preparation and, therefore, the matter may be adjourned. Learned Judge passed order that since the accused is in jail and the witnesses are also present. no further time can be granted and, therefore, the prosecution was directed to commence the trial at 3.30 p.m. on 26.5.2000. Thereafter, Mr B M Gupta, learned Advocate submitted application as Advocate for the petitioner on 2.6.2000 at Exh.11 which is placed at Annexure 'B' and requested that the Examination-in-chief be recorded afresh. The said application was heard by the learned Addl.Sessions Judge who was pleased to dismiss the said application by order dated 2.6.2000. Thereafter, the petitioner submitted one more application Exh.12 at Annexure 'C' dated 2.6.2000 for production of certain documents before the court. The said application was disposed of. However, it was directed to the prosecution to furnish copy of the case papers of the injured to learned Advocate Mr B M Gupta on 12.6.2000 in the interest of justice to enable Mr Gupta to cross-examine PW 1 on 14.6.2000.

3. On the strength of the aforesaid materials, the petitioner claims that he had not engaged any Advocate and no arrangement was made for defending his case. Therefore, it was necessary for him to obtain some time for engaging Advocate and for defending his case. That this was not done and the learned Addl.Sessions Judge proceeded ahead with the trial and witnesses were also examined. That this has caused grave injustice to the petitioner and therefore, he has come to this court by filing this petition for quashing the aforesaid orders.

4. Urgent show-cause notice was issued and thereafter, Rule was issued. Mr K G Sheth, learned APP appears for the State. He has also submitted the affidavit of Mr J H Champavat, Registrar, City Civil &

Sessions Court, Ahmedabad at page No.40. I have heard the learned Advocates for the parties and have perused the papers.

5. Learned Advocate for the petitioner has argued that there is a practice prevailing in the City Civil & Sessions Court since years that when the Sessions Cases are ready, they are being distributed amongst the Addl.Sessions Judges for framing of charge. After framing of charge, the matters are sent back to the learned Principal City Civil & Sessions Judge. Thereafter, he would again distribute the matters for trial amongst the learned Addl.Sessions Judges working in the said Court and thereafter those Addl.Sessions Judges would proceed with the matter. This procedure does not appear to be in dispute. Even the affidavit filed by the Registrar of the Civil Court makes it clear that the Superintendent of the Criminal Department had submitted a list of 17 matters to the learned Principal Judge to be allotted for framing of charge. That the matters were distributed amongst different Addl.Sessions Judges as detailed in the said affidavit. It is further stated that the Addl.Sessions Judge had framed charge and thereafter had kept the said matter with her for proceeding further with the trial. This shows that there was departure from the above said practice. When the matter was sent to her for framing of charge, the learned Addl.Sessions Judge was expected to frame charge and then to return the Records and Proceedings back to the Principal Judge for distribution of matters according to his choice. Learned Addl.Sessions Judge was not expected to retain the said papers for proceeding with the trial of the said matter. Mr K G Sheth, learned APP also confirms this position. Apart from the aforesaid departure from the practice, the fact remains that on the date on which the matter was fixed for evidence, the petitioner was undefended. He faces charge of offences punishable under Section 302 of IPC which involve capital punishment also. When the petitioner was not defended, then some arrangement could have been made for his defence. If the arrangement was not made by the petitioner himself, then even the court could have made appropriate arrangement for the defence of the petitioner at the State's expenditure. Even legal aid could be provided under the provisions of Legal Services Authority Act, 1987. The accused persons must get legal assistance for prosecuting the case against him. In the present case, it appears that this has not been done. It appears that the petitioner submitted before the court below that one Mr S V Raju was to defend him and since Mr Raju could not remain present, submission was made that Mr B M Gupta

would appear in the matter. However, he also could not attend the matter. Therefore, time was sought. Mr B M Gupta, learned Advocate makes a statement that the petitioner had approached him at 11.30 a.m. on the date on which the matter was fixed for evidence. That therefore, he could not appear in the said matter but evidence of the petitioner was recorded on the very day. Mr Gupta submits that the petitioner is facing a very grave and serious charge and the matter could not be taken up very lightly and could not be conducted unless full preparation is made. That since the petitioner had approached him at 11.30 a.m. on the same date and it was not possible for him to dictate. Therefore, he had orally requested the court to keep the matter on 29.5.2000, but that was not done by the trial court. The fact remains that the petitioner faces grave charge and it was necessary for him to make some arrangement for his defence which he could not make at the relevant time. Therefore, it would be in the fitness of things and in the interest of justice that the petitioner should get a fresh opportunity to have a fresh trial. It is true that the examination-in-chief has been recorded in absence of the learned Advocate of the petitioner but at the same time, some times it so happens that the parties and Advocates desire that the chief examination is recorded in their presence. If they voluntarily remain absent then such right cannot be claimed as a matter of right but in view of the aforesaid circumstances, when there was no arrangement made for defence of the petitioner either privately or at State's expenditure, then I am of the opinion that this is a fit case wherein the examination-in-chief recorded by the trial court should be set aside and fresh examination-in-chief is ordered to be recorded. If this is done, then probably there will be no room for grievance. so far as the documents are concerned, there is no grievance since they have been subsequently supplied.

6. It has been submitted by the learned Advocate for the petitioner that the learned Addl.Sessions Judge, who conducted the matter as aforesaid, is at present not in-charge of criminal matters. Naturally, this case may go to some another Judge working in the said court. In the aforesaid view of the matter, it will be open to the petitioner to make appropriate submissions for supply of documents if the same are not supplied and if they are otherwise relevant and important for the purpose of trial in the matter. Under the circumstance, the petition is partly allowed and the examination-in-chief recorded by the learned Addl.Sessions Judge in respect of the witnesses PW. I, Motiram Pandurang on 26.5.2000 is

ordered to be quashed.

7. Learned Principal Judge will be at liberty to allot this Sessions Case to any of the Addl.Sessions Judges of his Court for trial according to law or even he himself may take up the trial of the case. The learned Judge to whom this case may be allotted will examine the aforesaid witness afresh. As regards supply of documents, it is open to the petitioner to submit appropriate application for supply of documents and the said application may be disposed of by the learned Judge on merits.

Rule is made absolute to the aforesaid extent.

05.10.2000 [D P Buch, J
msp.